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REMARKS

Applicant has noted the claim renumbering by the Examiner.

The Examiner has rejected Claims 1-3, 10, 12-14, 16-21, 28, 30-32, 34-36, and 39 under 35 U.S.C. 103(a) as being unpatentable over Chen et al. (US Patent Number: 5,960,170) in further view of Nash (US Patent Number: 6,449,645 B1). Applicant respectfully disagrees with such rejection, especially in view of the amendments made hereinabove.

Specifically, the Examiner has admitted that Chen does not explicitly suggest applicant's claimed "determining whether the risk assessment scan involves an intermediate device coupled between the target and the remote source" and "notifying an administrator if it is determined that the risk assessment scan involves the intermediate device" (see this or similar, but not identical, language in each of the independent claims).

The Examiner then relies on the following excerpt from Nash to meet such claim limitations.

"Another description/embodiment of the method of the might be characterized as a method for detecting an illegal use of a packet of digitized information. In this case steps include features such as installing a first computer routine in a plurality of computers. It is generally preferable that the first computer routine does not interfere with use of the packet of digitized information. This is preferably true regardless of whether the illegal use is indicated or not. As discussed before a first indicia, such as an identification number or the like, is associated with the packet of digitized information for identifying the packet of digitized information. A second indicia is related to each of the plurality of computers. Obviously, the first and second indicia could be formed of one string of computer symbols, two strings, or a plurality of strings. However the effect is to determine the first and second indicia that are associated as described for determining whether the uniquely identified software is found on more than one computer. Another step involves automatically determining whether one of the plurality of computers is presently in communication with a network of computers, such as might include the Internet or an intranet of computers. When the one of the plurality of computers is presently in communication with the network of computers, which could be the Internet or an intranet or both, then automatically sending the first indicia and the respective second indicia over the network of computers to a second location." (col. 4, lines 1-24)

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The Examiner then purports that “Nash teaches determining one of the pluralities of computers is presently involve[d] (in communication) with a network of computers.” Whether this is true or not, it appears that the Examiner is not taking into consideration the full weight of applicant’s claims. Determining whether a computer is in communication with a network of computers in no way suggests “determining whether the risk assessment scan involves an intermediate device coupled between the target and the remote source” and “notifying an administrator if it is determined that the risk assessment scan involves the intermediate device” (emphasis added).

Only applicant teaches and claims the act of determining whether a risk assessment performed between the target and the remote source traverses an intermediate device.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant’s disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

Applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above. A notice of allowance or a specific prior art showing of all of applicant’s claim limitations, in combination with the remaining claim elements, is respectfully requested.

Nevertheless, despite the paramount differences highlighted above and in the spirit of expediting the prosecution of the present application, applicant has amended each of the independent claims to include the following subject matter for consideration:

“wherein additional operations are carried out to improve a risk assessment in view of the presence of the intermediate device coupled between the target and the remote source.”

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Thus, applicant has further emphasized the thrust of one embodiment; that is, improving a risk assessment in view of the presence of an intermediate device coupled between the target and the remote source. Again, a notice of allowance or a specific prior art showing of all of applicant's claim limitations, in combination with the remaining claim elements, is respectfully requested.

With respect to the dependent claims, applicant has carefully reviewed the excerpts relied upon by the Examiner to reject the same, and has found serious deficiencies in the Examiner's application of the prior art. Just by way of example, the Examiner relies on the above excerpt from Nash to meet applicant's claimed "wherein a plurality of procedures are utilized to determine whether the risk assessment scan involves the intermediate device" (see Claim 3 et al.). Such excerpt, however, makes absolutely no mention of risk assessment, let alone using a plurality of procedures to determine whether the risk assessment scan involves the intermediate device.

With respect to the subject matter of Claim 10 et al., the Examiner relies on the following excerpt from Chen to meet applicant's claimed "wherein at least one of the procedures includes transmitting a first request for content to the target utilizing the network, and transmitting a second request for a cached version of the content to the target utilizing the network."

"Once it is determined by the virus detection server that a valid virus detection request has been received, the virus detection server operates to iteratively detect and treat viruses associated with the requester, typically the client. The iterative production of virus detection objects allows objects to be specifically tailored according to previously determined conditions and/or conditions discovered as a result of the execution of previously produced virus detection objects. Specifically, a virus detection object is produced by the virus detection server and is transmitted to the client. The virus detection object includes an executable program which the client includes a corresponding executing engine. Thus, when the client receives the virus detection object, it executes the object and produces a result that is transmitted back to the virus detection server. The results of the execution of the virus detection object are transmitted to the virus detection server so that the server can produce additional virus detection objects based upon the results of the execution of the previous virus detection object or objects." (see col. 3, lines 8-27)

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procedures further includes determining whether a value of a flag is different for communication attempts using at least two ports on the port list."

"FIG. 5C illustrates the format of an IP network layer (L3) header 506. The IP network layer (L3) header 506 includes a source IP address 544, a destination IP address 546, an IP Version field 522, an IP length field 524, Type of Service ("TOS") 526, Total Length 528, identification 530, Flags 532, Fragment Offset 534, Time to Live ("TTL") 536, Protocol Type 540, Header Checksum 542, Options 548 and Pad 550.

FIG. 5B illustrates the format of an Ethernet data link (L2) header 504. The Ethernet data link (L2) header 504 includes a destination address 514, a source address 516, an optional Virtual Local Area Network Identification ("VLAN ID") field 518 and a length/type field 520.

FIG. 5C illustrates the format of an IP network layer (L3) header 506. The IP network layer (L3) header 506 includes a source IP address 544, a destination IP address 546, an IP Version field 522, an IP length field 524, Type of Service ("TOS") 526, Total Length 528, identification 530, Flags 532, Fragment Offset 534, Time to Live ("TTL") 536, Protocol Type 540, Header Checksum 542, Options 542 and Pad 550.

FIG. 5D illustrates the format of a TCP transport layer (L4) header 508a. The TCP transport layer (L4) header 508a includes the following fields: a TCP source port 552a, a TCP destination port 554a, a sequence number 556, an acknowledgment number 558, TCP offset 560, a reserved field 562, TCP flags 564, Window 566, TCP header Checksum 568, Urgent Pointer 570, Options 572 and TCP pad 574." (see col. 6, lines 18-45)

Such excerpt, however, merely suggests various formats. This disclosure, in no way, suggests any sort of functionality that meets applicant's claims, since there is not even a suggestion of applicant's claimed "determining whether a value of a flag is different for communication attempts using at least two ports on the port list," as claimed.

Again, these examples of deficiencies in the Examiner's rejection of the dependent claims are merely exemplary and illustrative. Applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above. A notice of allowance or a specific prior art showing of all of applicant's claim limitations, in combination with the remaining claim elements, is respectfully requested.

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In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 971-2573. For payment of any additional fees due in connection with the filing of this paper, the Commissioner is authorized to charge such fees to Deposit Account No. 50-1351 (Order No. NAIIP012/01.132.01).

Respectfully submitted,

By: _____

Kevin J. Zilka

Reg. No. 41,429

Date: _____

11/23/01

Zilka-Kotab, PC
P.O. Box 721120
San Jose, California 95172-1120
Telephone: (408) 971-2573